

ORIGINAL  
OPEN MEETING



0000131733

MEMORANDUM

Arizona Corporation Commission

DOCKETED

NOV 16 2011

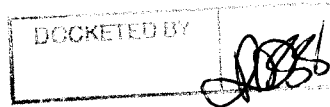
RECEIVED

2011 NOV 16 A 9:19

TO: THE COMMISSION

FROM: Utilities Division

DATE: November 16, 2011



AZ CORP COMMISSION  
DOCKET CONTROL

RE: 360NETWORKS (USA) INC. FOR APPROVAL OF A FINANCING ORDER  
AUTHORIZING VARIOUS FINANCING TRANSACTIONS (DOCKET NO.  
T-03777A-11-0370)

Introduction

On October 11, 2011, 360networks (USA) inc. ("360networks" or "Applicant") filed an application seeking approval from the Arizona Corporation Commission ("ACC" or "Commission") pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 for 360networks to encumber its assets in Arizona. The proposed transaction is in connection with certain financing arrangements of Zayo being undertaken in conjunction with the proposed acquisition of 360networks' parent, 360networks holdings (USA) inc. ("360-Holdings"), by Zayo. The participation of 360networks in the financing arrangements of Zayo is contingent on 360networks' ultimate parent, 360networks Corporation ("360-Parent"), completing a proposed transaction with Zayo whereby Zayo will acquire all of the stock of 360-Holdings. In order to consummate the proposed transactions in the fourth quarter of this year, Zayo requested that the Commission consider this matter no later than December 8, 2011.

Background

**360networks holdings (USA) inc. and 360networks (USA) inc.**

360-Holdings is a Nevada corporation and indirect subsidiary of 360networks Corporation ("360-Parent"), a corporation organized under the laws of British Columbia with principal offices located at 2101 Fourth Avenue, Suite 2000, Seattle, Washington 98121. 360networks is a Nevada corporation and a wholly owned direct subsidiary of 360-Holdings.

360networks is 360-Holdings' operating subsidiary that provides regulated telecommunications services. 360networks provides Private Line Transport, Ethernet, and IP Transit services to telecommunications providers and end users. 360networks' facilities-based fiber optic backbone provides coverage spanning 18,000 route miles covering 22 states and British Columbia. 360networks also provides wholesale Voice over Internet Protocol ("VoIP") services and switched access services in 17 states, including Arizona.

360networks is authorized to provide local exchange and interexchange services in 36 states. In Arizona, 360networks is authorized to provide local exchange switched access services

and interexchange telecommunications services pursuant to Decision Nos. 69240 and 62710, respectively.

### **Zayo Group, LLC**

Zayo is a Delaware limited liability company with principal offices at 400 Centennial Parkway, Suite 200, Louisville, Colorado 80027. Zayo is a wholly owned subsidiary of Zayo Group Holdings, Inc., a Delaware corporation and wholly owned subsidiary of Communications Infrastructure Investments, LLC ("CII"), a Delaware limited liability company.

Zayo is a provider of bandwidth infrastructure and interconnection services over regional and metropolitan fiber networks, enabling its customers to manage, operate, and scale their telecommunications and data networks. Zayo's services are primarily used by wireless service providers, national and regional carriers and other communications service providers, media and content companies, and certain bandwidth-intensive enterprises.

Zayo's fiber networks span over 24,000 route miles, serve 153 geographic markets in the District of Columbia and 31 states, including Arizona, and connect to over 4,300 buildings, including approximately 1,978 cellular towers. These networks allow Zayo to provide bandwidth infrastructure services to customers over redundant fiber facilities between key customer locations. The majority of the markets that Zayo serves have few other networks capable of providing similar bandwidth infrastructure services.

In Arizona, Zayo is authorized to provide facilities-based local exchange and resold and facilities-based intraLATA and interLATA private line services pursuant to Decision No. 72561.

### **The Proposed Transaction**

The Applicant represents the following in its application:

Pursuant to the terms of an October 6, 2011 stock purchase agreement, the outstanding shares of 360-Holdings will be acquired by Zayo. As a result of the acquisition, 360-Holdings will become a direct subsidiary of Zayo. 360networks will remain a direct subsidiary of 360-Holdings and, therefore, will become an indirect subsidiary of Zayo. In order to fund the acquisition of 360-Holdings, Zayo plans to incur up to \$355 million in additional indebtedness. Zayo is currently negotiating the terms of the proposed financing.

In connection with existing financings approved by the Commission, Zayo pledged certain of its assets as security.<sup>1</sup> Under the existing financings, all of Zayo's existing and future subsidiaries are required to provide a guaranty and related pledge of certain assets as security for

---

<sup>1</sup> In Docket Nos. T-20694A-10-0076, T-20694A-10-0295, T-20667A-10-0295, Zayo (1) issued \$350 million in senior secured notes accruing interest at a rate of 10.25% per year and maturing on March 15, 2017 and (2) entered into a \$100 million revolving credit facility, borrowings under which accrue interest at a rate of LIBOR + 3.50-4.50% or Base Rate + 2.50-3.50% depending on Zayo's Leverage Ratio and mature on March 1, 2014.

the existing financings. Upon consummation of the 360-Holdings acquisition by Zayo, 360networks will, therefore, be required to provide a guaranty and related pledge of assets as security for the existing financings. 360networks therefore requests approval to encumber its assets as security for the existing financings upon consummation of the 360-Holdings acquisition by Zayo. Details of the proposed financing, also presented in a related filing by Zayo<sup>2</sup>, are as follows:

While Zayo expects that the proposed financing will consist of short-term and long-term term loans, in order to maintain flexibility, Zayo seeks approval for indebtedness in the form of secured or unsecured notes or debentures (including notes convertible into equity and private notes that may be exchanged for public notes); conventional credit facilities, such as revolving credit facilities (which can be re-borrowed during the term of the commitment) and term loans; letters of credit; and bridge loans; or a combination thereof.

While Zayo expects any long-term indebtedness incurred as part of the proposed financing to mature approximately five (5) years following the closing of the acquisition of 360networks, in order to maintain flexibility, Zayo seeks approval for indebtedness that will mature up to eight (8) years after issuance following the 360 Transaction.

Any interest rate for the proposed financing will likely be the market rate for similar financings and will not be determined until the financing is finalized. Zayo currently expects the proposed financing to accrue interest at a floating rate consisting of LIBOR<sup>3</sup> or a prime rate plus an agreed margin. In order to maintain flexibility, however, Zayo seeks approval for indebtedness that, depending on the type of debt securities, facility(ies) or other arrangements, accrues interest at rate(s) that may be fixed (typically set at signing or closing based on then current market conditions) or floating (consisting of a base rate, which will float with a rate index such as LIBOR or Federal Funds Rate, plus an applicable margin), or a combination of fixed rates and floating rates.

Some and perhaps all of the proposed financing is expected to be secured by a security interest in the assets of Zayo and its current and future subsidiaries. The stock of Zayo and its subsidiaries may also be pledged as additional security.

---

<sup>2</sup> In the matter of the application of Zayo Group, LLC for approval of a financing order authorizing various financing transactions, T-20783A-11-0371, October 11, 2011.

<sup>3</sup> The London InterBank Offer Rate or LIBOR is the interest rate that banks charge each other for loans. This rate is applicable to the short-term international interbank market, and applies to very large loans borrowed for anywhere from one day to five years. This market allows banks with liquidity requirements to borrow quickly from other banks with surpluses, enabling banks to avoid holding excessively large amounts of their asset base as liquid assets. The LIBOR is officially fixed once a day by a small group of large London banks (the British Bankers Association), but the rate changes throughout the day. Source: [www.investorwords.com](http://www.investorwords.com) & [www.investopedia.com](http://www.investopedia.com)

Additionally, it is expected that Zayo's current and future subsidiaries will provide a guaranty as security for the proposed financing.

360networks states that the financing arrangements are necessary and appropriate, consistent with the performance of its services to the public, will not impair its ability to perform such services, and will promote the 360networks corporate purposes. 360networks's participation in the financing arrangements will be transparent to customers and will not disrupt service or cause customer confusion or inconvenience. Additionally, 360networks states that the proposed transactions described herein will not result in a change of carrier for any customers or any assignment of existing Commission authorizations. The rates, terms and conditions of services currently provided by 360networks to its customers will not change as a result of the proposed transactions.

#### Staff's Analysis and Conclusions

360networks and Zayo are not investor-owned Class A utilities as defined by R14-2-801 of the Commission's Public Utility Holding Companies and Affiliated Interest rules. As such, no approval is required for the indirect transfer of control of 360networks resulting from the acquisition of 360-Holdings by Zayo.

In discussion with Staff, 360networks confirmed that prepaid customer funds and/or deposits will not be encumbered as part of the security for the proposed financing. 360networks published notice of its financing application in the Arizona Republic on September 18, 2011. The corresponding affidavit was filed in Docket Control on October 30, 2011.

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to "sell, lease, assign, mortgage or otherwise dispose of or encumber" certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service.

Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Additionally, Staff concludes that a pledge of the Applicant's assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers.

#### Recommendations

Staff recommends approval of 360networks's request to pledge its assets as security for the financing as described in its application subject to the condition that all customer deposits and prepayments be excluded from the proposed transactions. Staff further recommends that within 90 days of a decision in this matter, copies of executed security documents and loan

documents shall be provided to the Compliance Section, but not docketed, and notice thereof be filed with Docket Control.

A handwritten signature in black ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Steven M. Olea.

Steven M. Olea  
Director  
Utilities Division

SMO:AFF:lhmk/KR

ORIGINATOR: Armando F. Fimbres

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

BEFORE THE ARIZONA CORPORATION COMMISSION

GARY PIERCE  
Chairman  
BOB STUMP  
Commissioner  
SANDRA D. KENNEDY  
Commissioner  
PAUL NEWMAN  
Commissioner  
BRENDA BURNS  
Commissioner

IN THE MATTER OF THE APPLICATION )  
OF 360NETWORKS (USA) INC. FOR )  
APPROVAL OF A FINANCING ORDER )  
AUTHORIZING VARIOUS FINANCING )  
TRANSACTIONS )  
\_\_\_\_\_ )

DOCKET NO. T-03777A-11-0370  
DECISION NO. \_\_\_\_\_  
ORDER

Open Meeting  
*To Be Determined*  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. 360networks (USA) inc. ("360networks" or "Applicant") is certificated to provide intrastate telecommunications service as a public service corporation in the State of Arizona.
2. On October 11, 2011, 360networks (USA) inc. ("360networks" or "Applicant") filed an application seeking approval from the Arizona Corporation Commission ("ACC" or "Commission") pursuant to Arizona Revised Statutes ("A.R.S.") § 40-285 for 360networks to encumber its assets in Arizona. The proposed transaction is in connection with certain financing arrangements of Zayo being undertaken in conjunction with the proposed acquisition of 360networks' parent, 360networks holdings (USA) inc. ("360-Holdings"), by Zayo. The participation of 360networks in the financing arrangements of Zayo is contingent on 360networks' ultimate parent, 360networks Corporation ("360-Parent"), completing a proposed transaction with Zayo whereby Zayo will acquire all of the stock of 360-Holdings.
- ...

3. In order to consummate the proposed transactions in the fourth quarter of this year, Zayo requested that the Commission consider this matter no later than December 8, 2011.

Background

**360networks holdings (USA) inc. and 360networks (USA) inc.**

4. 360-Holdings is a Nevada corporation and indirect subsidiary of 360networks Corporation ("360-Parent"), a corporation organized under the laws of British Columbia with principal offices located at 2101 Fourth Avenue, Suite 2000, Seattle, Washington 98121. 360networks is a Nevada corporation and a wholly owned direct subsidiary of 360-Holdings.

5. 360networks is 360-Holdings' operating subsidiary that provides regulated telecommunications services. 360networks provides Private Line Transport, Ethernet, and IP Transit services to telecommunications providers and end users. 360networks' facilities-based fiber optic backbone provides coverage spanning 18,000 route miles covering 22 states and British Columbia. 360networks also provides wholesale Voice over Internet Protocol ("VoIP") services and switched access services in 17 states, including Arizona.

6. 360networks is authorized to provide local exchange and interexchange services in 36 states. In Arizona, 360networks is authorized to provide local exchange switched access services and interexchange telecommunications services pursuant to Decision Nos. 69240 and 62710, respectively.

**Zayo Group, LLC**

7. Zayo is a Delaware limited liability company with principal offices at 400 Centennial Parkway, Suite 200, Louisville, Colorado 80027. Zayo is a wholly owned subsidiary of Zayo Group Holdings, Inc., a Delaware corporation and wholly owned subsidiary of Communications Infrastructure Investments, LLC ("CII"), a Delaware limited liability company.

8. Zayo is a provider of bandwidth infrastructure and interconnection services over regional and metropolitan fiber networks, enabling its customers to manage, operate, and scale their telecommunications and data networks. Zayo's services are primarily used by wireless service providers, national and regional carriers and other communications service providers, media and content companies, and certain bandwidth-intensive enterprises.

9. Zayo's fiber networks span over 24,000 route miles, serve 153 geographic markets in the District of Columbia and 31 states, including Arizona, and connect to over 4,300 buildings, including approximately 1,978 cellular towers. These networks allow Zayo to provide bandwidth infrastructure services to customers over redundant fiber facilities between key customer locations. The majority of the markets that Zayo serves have few other networks capable of providing similar bandwidth infrastructure services.

10. In Arizona, Zayo is authorized to provide facilities-based local exchange and resold and facilities-based intraLATA and interLATA private line services pursuant to Decision No. 72561.

#### The Proposed Transaction

The Applicant represents the following in its application:

11. Pursuant to the terms of a October 6, 2011 stock purchase agreement, the outstanding shares of 360-Holdings will be acquired by Zayo. As a result of the acquisition, 360-Holdings will become a direct subsidiary of Zayo. 360networks will remain a direct subsidiary of 360-Holdings and, therefore, will become an indirect subsidiary of Zayo. In order to fund the acquisition of 360-Holdings, Zayo plans to incur up to \$355 million in additional indebtedness. Zayo is currently negotiating the terms of the proposed financing.

12. In connection with existing financings approved by the Commission, Zayo pledged certain of its assets as security.<sup>1</sup> Under the existing financings, all of Zayo's existing and future subsidiaries are required to provide a guaranty and related pledge of certain assets as security for the existing financings. Upon consummation of the 360-Holdings acquisition by Zayo, 360networks will, therefore, be required to provide a guaranty and related pledge of assets as security for the existing financings. 360networks therefore requests approval to encumber its assets as security for the existing financings upon consummation of the 360-Holdings acquisition

---

<sup>1</sup> In Docket Nos. T-20694A-10-0076, T-20694A-10-0295, T-20667A-10-0295, Zayo (1) issued \$350 million in senior secured notes accruing interest at a rate of 10.25% per year and maturing on March 15, 2017 and (2) entered into a \$100 million revolving credit facility, borrowings under which accrue interest at a rate of LIBOR + 3.50-4.50% or Base Rate + 2.50- 3.50% depending on Zayo's Leverage Ratio and mature on March 1, 2014.



1 by Zayo. Details of the proposed financing, also presented in a related filing by Zayo<sup>2</sup>, are as  
2 follows.

- 3 a. While Zayo expects that the proposed financing will consist of short-term and long-  
4 term term loans, in order to maintain flexibility, Zayo seeks approval for  
5 indebtedness in the form of secured or unsecured notes or debentures (including  
6 notes convertible into equity and private notes that may be exchanged for public  
7 notes); conventional credit facilities, such as revolving credit facilities (which can  
8 be re-borrowed during the term of the commitment) and term loans; letters of  
9 credit; and bridge loans; or a combination thereof.
- 10 b. While Zayo expects any long-term indebtedness incurred as part of the proposed  
11 financing to mature approximately five (5) years following the closing of the  
12 acquisition of 360networks, in order to maintain flexibility, Zayo seeks approval for  
13 indebtedness that will mature up to eight (8) years after issuance following the 360  
14 Transaction.
- 15 c. Any interest rate for the proposed financing will likely be the market rate for similar  
16 financings and will not be determined until the financing is finalized. Zayo  
17 currently expects the proposed financing to accrue interest at a floating rate  
18 consisting of LIBOR<sup>3</sup> or a prime rate plus an agreed margin. In order to maintain  
19 flexibility, however, Zayo seeks approval for indebtedness that, depending on the  
20 type of debt securities, facility(ies) or other arrangements, accrues interest at rate(s)  
21 that may be fixed (typically set at signing or closing based on then current market  
22 conditions) or floating (consisting of a base rate, which will float with a rate index  
23 such as LIBOR or Federal Funds Rate, plus an applicable margin), or a combination  
24 of fixed rates and floating rates.
- 25 d. Some and perhaps all of the proposed financing is expected to be secured by a  
26 security interest in the assets of Zayo and its current and future subsidiaries. The  
27 stock of Zayo and its subsidiaries may also be pledged as additional security.  
28 Additionally, it is expected that Zayo's current and future subsidiaries will provide  
a guaranty as security for the proposed financing.

13. 360networks states that the financing arrangements are necessary and appropriate,  
consistent with the performance of its services to the public, will not impair its ability to perform  
such services, and will promote the 360networks corporate purposes. 360networks's participation

<sup>2</sup> In the matter of the application of Zayo Group, LLC for approval of a financing order authorizing various financing transactions, T-20783A-11-0371, October 11, 2011.

<sup>3</sup> The London InterBank Offer Rate or LIBOR is the interest rate that banks charge each other for loans. This rate is applicable to the short-term international interbank market, and applies to very large loans borrowed for anywhere from one day to five years. This market allows banks with liquidity requirements to borrow quickly from other banks with surpluses, enabling banks to avoid holding excessively large amounts of their asset base as liquid assets. The LIBOR is officially fixed once a day by a small group of large London banks (the British Bankers Association), but the rate changes throughout the day., source: [www.investorwords.com](http://www.investorwords.com) & [www.investopedia.com](http://www.investopedia.com)

1 in the financing arrangements will be transparent to customers and will not disrupt service or cause  
2 customer confusion or inconvenience. Additionally, 360networks states that the proposed  
3 transactions described herein will not result in a change of carrier for any customers or any  
4 assignment of existing Commission authorizations. The rates, terms and conditions of services  
5 currently provided by 360networks to its customers will not change as a result of the proposed  
6 transactions.

7 Staff's Analysis and Conclusions

8 14. 360networks and Zayo are not investor-owned Class A utilities as defined by R14-  
9 2-801 of the Commission's Public Utility Holding Companies and Affiliated Interest rules. As  
10 such, no approval is required for the indirect transfer of control of 360networks resulting from the  
11 acquisition of 360-Holdings by Zayo.

12 15. In discussion with Staff, 360networks confirmed that prepaid customer funds and/or  
13 deposits will not be encumbered as part of the security for the proposed financing. 360networks  
14 published notice of its financing application in the Arizona Republic on September 18, 2011. The  
15 corresponding affidavit was filed in Docket Control on October 30, 2011.

16 16. A.R.S. § 40-285 requires public service corporations to obtain Commission  
17 authorization to "sell, lease, assign, mortgage or otherwise dispose of or encumber" certain utility  
18 assets. The statute serves to protect captive customers from a utility's act to dispose of any of its  
19 assets that are necessary for the provision of service; thus, it serves to preempt any service  
20 impairment due to disposal of assets essential for providing service.

21 17. Based on its analysis of the proposed transaction, Staff concludes that the transaction  
22 would not impair the financial status of the Company, would not impair its ability to attract capital,  
23 nor would it impair the ability of the Company to provide safe, reasonable, and adequate service.  
24 Additionally, Staff concludes that a pledge of the Applicant's assets would not impair the  
25 availability of service to customers since the Applicant provides competitive services that are  
26 available from alternative service providers.

27 ...

28 ...

Recommendations

18. Staff recommends approval of 360networks's request to pledge its assets as security for the financing as described in its application subject to the condition that all customer deposits and prepayments be excluded from the proposed transactions. Staff further recommends that within 90 days of a decision in this matter, copies of executed security documents and loan documents shall be provided to the Compliance Section, but not docketed, and notice thereof be filed with Docket Control.

CONCLUSIONS OF LAW

1. 360networks (USA) Inc. is a public service corporation within the meaning of Article XV of the Arizona Constitution.

2. The Commission has jurisdiction over 360networks (USA) Inc. and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated November 16, 2011, concludes that it is in the public interest to grant approval as proposed and discussed herein.

ORDER

IT IS THEREFORE ORDERED that the application of 360networks (USA) inc. as described herein, be and hereby is approved.

IT IS FURTHER ORDERED that the application of 360networks (USA) inc. is subject to the condition that all customer deposits and prepayments be excluded from this transaction.

IT IS FURTHER ORDERED that 360networks (USA) inc. be authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

...

...

...

...

...

...

1 IT IS FURTHER ORDERED that within 90 days of a decision in this matter, copies of  
2 executed security documents and loan documents shall be provided to the Compliance Section, but  
3 not docketed, and notice thereof be filed with Docket Control.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5  
6 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

7  
8 \_\_\_\_\_  
9 CHAIRMAN

COMMISSIONER

10  
11 \_\_\_\_\_  
12 COMMISSIONER

COMMISSIONER

COMMISSIONER

13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,  
14 Executive Director of the Arizona Corporation Commission,  
15 have hereunto, set my hand and caused the official seal of this  
16 Commission to be affixed at the Capitol, in the City of Phoenix,  
17 this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

18 \_\_\_\_\_  
19 ERNEST G. JOHNSON  
20 EXECUTIVE DIRECTOR

21 DISSENT: \_\_\_\_\_

22 DISSENT: \_\_\_\_\_

23 SMO:AFF:lhmkR  
24  
25  
26  
27  
28

1 SERVICE LIST FOR: 360networks (USA) inc.  
2 DOCKET NO. T-03777A-11-0370

3 Ms. Tamar E. Finn  
4 Ms. Danielle Burt  
5 Bingham McCutchen LLP  
6 2020 K Street, N.W., Suite 1100  
7 Washington, DC 20006-1806

8 Mr. Michel Singer Nelson  
9 Associate General Counsel  
10 360networks  
11 370 Interlocken Boulevard, Suite 600  
12 Broomfield, Colorado 80021

13 Mr. Thomas H. Campbell  
14 Mr. Michael T. Hallam  
15 Lewis & Roca LLP  
16 40 North Central Avenue  
17 Phoenix, Arizona 85004

18 Mr. Steven M. Olea  
19 Director, Utilities Division  
20 Arizona Corporation Commission  
21 1200 West Washington Street  
22 Phoenix, Arizona 85007

23 Ms. Janice M. Alward  
24 Chief Counsel, Legal Division  
25 Arizona Corporation Commission  
26 1200 West Washington Street  
27 Phoenix, Arizona 85007  
28